

**TIES**

RECEIVED

Case 505-G

Case 505-G

Case 505-G

Case 505-G

## Case 505-G

Case 505-G

## Case 505-G

Case 505-G

Case 505-G

Georgakopoulos' application because the proposed fence included a section forward of the rear building line of the house. In a letter dated April 9, 1999, Doral formally notified the Georgakopoulos of the denial of their fence application. By this time the construction of the fence had been completed.

On May 6, 1999, Doral wrote to Mrs. Georgakopoulos informing her that the installed fence did not comply with the Association's guidelines and gave her 30 days to comply or "the Association may proceed with correcting the stated violation at your expense by placing a lien against your property." Numerous communications between the Association and Mrs. Georgakopoulos over the next year failed to resolve the issue, and on November 15, 2000, Doral filed a complaint with the Commission on Common Ownership Communities.

### **FINDINGS OF FACT**

1. Panayiotis and Marika Georgakopoulos, respondents, are homeowners residing at 13114 Princeville Court, Silver Spring, MD 20904. This residence is located in the Doral Homeowners Association. Mrs. Georgakopoulos is not fluent in the English language and was assisted at the hearing by her daughter-in-law.
2. The Doral Homeowners Association is a community located in Silver Springs, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions. The relevant provision of the Declaration that governs this dispute is Article VI, Section 6.02(t).
3. The Association has promulgated architectural guidelines, outlining the procedure for architectural approvals. The guidelines also discuss use restrictions.
4. The fence constructed by Panayiotis and Marika Georgakopoulos extends forward of the rear building line of their house.
5. Two other homes in the community, 606 and 608 Seminole Creek Way, have fences that extend forward of the rear building line of each house. The Association believes that these fences were installed by the developer.

### **CONCLUSIONS OF LAW**

1. The Doral Declaration of Covenants, Conditions And Restrictions is a valid and enforceable document. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. Article V, Architectural Control, gives the Homeowners Association the authority to regulate and approve or disapprove changes in the community. Furthermore, the board has the authority to require a homeowner to submit an application seeking approval for the erection and/or construction of any "building, fence, wall, mailbox or other structure."
3. Article VI, Section 6.02(t) states that "any fence constructed upon the Property shall not extend forward of the rear building line of the dwelling on the Lot upon which any such fence is erected." The Association adopts a rigid reading of this provision.
4. Article VI, Section 6.05(a) exempts the developer from the restrictions enumerated in Article VI.
5. Absent fraud or a lack of good faith on the part of the Board of Directors, courts generally will not interfere with homeowners association decisions authorized under the covenants. Black v. Fox Hills North Community Association, Inc., 599 A.2d 1228 (Md. App.1992).

### **DISCUSSION**

The legal decision in this case was easy for the panel to reach. The facts are undisputed and the law is clear. Mr. and Mrs. Georgakopoulos had a fence constructed, prior to receiving approval from the community, that extended forward of the rear building line of their house. Both the architectural guidelines and the Declaration of Covenants regulate fences with each document indicating that the rear building line of the house is the forward limit for fences.<sup>1</sup> Therefore, Doral had the authority to order Mr. and Mrs. Georgakopoulos to move the fence the few feet necessary so that it precisely lines up with the rear building line of their house. This panel will not interfere with that authority.

---

<sup>1</sup> There are two homes in the community with fences forward of the rear building line. These fences were apparently built by the developer prior to the developer ceding control of the Association to the homeowners. Article VI, Section 6.05(a) of the Covenants exempts the developer from the restrictions governing the community thus allowing the developer to construct fences that appear to be prohibited by the Covenants.

The Board was within its authority to require the fence be moved. However, had the Board decided otherwise, that is, had the Board allowed the fence to remain as constructed, under a reasoned and legitimate interpretation of the covenants<sup>2</sup>, the "business judgment rule" would preclude this panel and the courts from interfering with that decision, providing the Board acted in good faith and without fraud. Black, 599 at 1231.

The court in Black declined to interfere in the internal operations of a homeowners association deciding a nearly identical issue. That case also involved the application of a covenant limiting the construction of fences. "Any fence constructed upon the Property shall not extend beyond the front building line of the dwelling on the lot upon which any such fence is erected or the front building line of the dwellings on all immediately adjacent lots." Black, 599 A.2d at 1230. The community included "pipestem" lots and it approved the construction of a fence on a property adjacent to, and forward of, a "pipestem" lot. The owner of the "pipestem" lot complained, alleging a violation of the fence covenant. When the association failed to act on the complaint, the complaining homeowner filed suit in the Circuit Court of Montgomery County. The court dismissed the suit against the association and the complaining homeowner appealed. The Court of Special Appeals affirmed the Circuit Court.

The decision which the association made to approve the . . . fence was a decision which it was authorized to make. Whether that decision was right or wrong, the decision fell within the legitimate range of the association's discretion. As such, the association was under no obligation to proceed against the [homeowners who built the fence] to remove the fence. There was no allegation in the complaint of any fraud or bad faith. Absent fraud or bad faith, the decision to approve the fence was a business judgment with which a court will not interfere.

Black, 599 A.2d at 1231-32.

While the decision of Doral's Board was within its authority, the panel has some concerns with the view stated at the hearing, by James R. Michal, former President of the Doral Board of

---

<sup>2</sup> A question that the Board should consider is "what is the rear building line?" Would the Board have required Mr. and Mrs. Georgakopoulos to move the fence three inches? one foot? eighteen inches? The answer is not material to the panel's decision but it is the essence of the reasoned and legitimate interpretation of this covenant.

Directors, that the Board of Directors had no choice but to be rigid and demand that the fence be moved. The court in Black makes clear that homeowners associations can exercise judgment when making a reasoned and legitimate interpretation of the covenants. This is not to suggest that either the Court of Special Appeals or this panel would, or should, stand idle while a homeowners association board of directors eviscerates its covenants. However, it is clear that the Board's good faith "business judgment" is not open to review by adjudicative bodies.

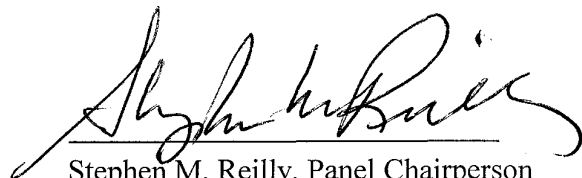
### **ORDER**

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

Panayiotis and Marika Georgakopoulos must file a new application for their fence with a diagram indicating the proposed new location. Doral will either approve the application as submitted or specifically identify an approved location for the fence. After such approval or notification, Mr. and Mrs. Georgakopoulos must move, if necessary, the fence to comply with Doral's instructions. Each party is responsible for its own costs associated with this action.

The foregoing was concurred in by panel members Neel, Subin and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read "Stephen M. Reilly", is written over a horizontal line.

Stephen M. Reilly, Panel Chairperson  
Commission on Common Ownership  
Communities